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No. 83-2126

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

THE STATE OF OKLAHOMA
Petitioner,
v.
TIMOTHY R. CASTLEBERRY
and
NICHOLAS RAINERI
Respondents.

ON WRIT OF CERTIORARI TO THE
OKLAHOMA COURT OF CRIMINAL APPEALS

REPLY BRIEF OF PETITIONER

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944

TABLE OF CONTENTS

	<u>Page</u>
ARGUMENT.	1
CONCLUSION.	6

TABLE OF AUTHORITIES

Cases:

<u>Carroll v. United States</u> , 267 U.S. 132 (1925).	4
<u>State v. Castleberry</u> , 68 P.2d 720 (Okla. Cr. 1984).	5
<u>United States v. Chadwick</u> , 433 U.S. 1 (1977)	4
<u>United States v. Johns</u> , 105 S.Ct. 881 (1985).	1,2,3,4,5
<u>United States v. Ross</u> , 456 U.S. 798 (1982).	5

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ARGUMENT

The State contends that the recent case of United States v. Johns, 105 S.Ct. 881 (1985), supports the arguments made by the State in its brief-in-chief. In that case, this Court held that there was probable cause to seize, and then search wrapped and sealed packages which were found in the back of parked trucks.

The probable cause factors in Johns support a finding of probable cause in the present case. In Johns, after surveilling trucks at a small private airstrip near the Mexican border and observing the arrival and departure of aircraft, the officers approached the rear of one of the trucks, ordered the defendants to come from behind the trucks, and lie on the ground. The arresting officers then walked toward the trucks, smelled the odor of marijuana, and observed packages in the back of those trucks which were wrapped in dark green plastic and sealed with tape.

This Court upheld the warrantless seizure of the packages and the subsequent search of such. The Court specifically noted that when the officers detected the odor of marijuana they had probable cause to believe that the vehicles contained contraband. 105 S.Ct. at 884. The Court

also noted that contraband "might well have been hidden elsewhere in the vehicles." 105 S.Ct. at 884.

In the present case, in addition to the facts which were known to Officer Taylor at the time he approached the defendants and ordered them to place their hands on the vehicle, the evidence revealed that Officer Taylor detected the scent of marijuana coming from the trunk of the defendants' vehicle (Tr. I, 11). Therefore, the holding in United States v. Johns, supra, should apply to the present case and this Court should find that Officer Taylor had probable cause to search the vehicle therein.

In Johns the Supreme Court again held that there is no requirement that exigent circumstances exist in order to justify the warrantless search of a vehicle lawfully in police custody when there is

probable cause to believe it contains contraband. 105 S.Ct. at 885. The Court also noted that United States v. Chadwick, 433 U.S. 1 (1977), did not involve the automobile exception recognized in Carroll v. United States, 267 U.S. 132 (1925), "because the police had no probable cause to believe that the automobile, as contrasted to the footlocker, contained contraband." 105 S.Ct. at 884. Therefore, this statement supports the State's contention in its brief-in-chief that since probable cause existed to support the belief that contraband "might well have been hidden elsewhere" in the vehicle, the search was valid.

The State also contends that the holding in Johns contradicts that portion of the holding by the Oklahoma Court of Criminal Appeals which stated that if an

officer knows the specific location of the contraband in the vehicle, he or she must obtain a search warrant. State v. Castleberry, 678 P.2d 720, 724 (Okl.Cr. 1984); A.34. In Johns this Court stated that "the officers no doubt suspected that the scent was emanating from the packages that they observed in the back of the pickup trucks." 105 S.Ct. at 884. Nevertheless, the Court upheld the warrantless search of those packages.

For these reasons and for the reasons stated in the brief-in-chief filed by the State of Oklahoma in the present case, the State contends that the officers had probable cause to conduct a search of the defendants' vehicle and every part of the vehicle which may have contained the object of the search, including the compartments and containers inside of such.

United States v. Ross, 456 U.S. 798, 825
(1982); United States v. Johns, supra,
105 S.Ct. at 885.

CONCLUSION

For the reasons stated in the brief-
in-chief and in this reply, the State of
Oklahoma requests this Court to reverse the
judgment of the Oklahoma Court of Criminal
Appeals.

Respectfully submitted,

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